

Commodity Futures Trading Commission

§ 148.27

Commission or other agency against which an award is sought may file an answer to the application. Unless counsel for the Commission or for another relevant agency requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If counsel for the Commission or for another relevant agency and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the Presiding Officer upon request by counsel for the Commission or for another relevant agency and the applicant.

(c) Any answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the position of counsel for the Commission or for another relevant agency. If the answer is based on any alleged facts not already in the record of the adjudicatory proceeding, counsel for the Commission or for another relevant agency shall include with the answer either supporting affidavits or a request for further proceedings under § 148.26 of this part.

§ 148.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adjudicatory proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 148.26 of this part.

§ 148.24 Comments by other parties.

Any party to an adjudicatory proceeding other than the applicant and counsel for the Commission or for another relevant agency may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Presiding Officer determines

that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 148.25 Settlement.

The applicant may propose settlement of the award to the Commission before final action on the application, either in connection with a settlement of the adjudicatory proceeding, or after the adjudicatory proceeding has been concluded, in either case in accordance with § 10.108 of this chapter. If a prevailing party offers a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 148.26 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Commission or for another relevant agency, or on his or her own initiative, the Presiding Officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the Commission was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought. No discovery and/or evidentiary proceedings shall be permitted into the question of whether the agency's position was substantially justified.

(b) A request that the Presiding Officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why additional proceedings are necessary to resolve the issues.

[46 FR 57671, Nov. 25, 1981, as amended at 51 FR 18881, May 23, 1986]

§ 148.27 Decision.

The Presiding Officer shall issue an initial decision on the application in